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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-139**

13 **JOHN PATRICK VALARIK**
14 **3131 Dwight Street**
15 **San Diego, CA 92104**

A C C U S A T I O N

16 **Registered Nurse License No. 783815**

17 **Respondent.**

18 **Complainant alleges:**

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about September 15, 2010, the Board of Registered Nursing issued Registered
24 Nurse License Number 783815 to John Patrick Valarik (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of non-payment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

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1 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 9. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or
8 to suspend or revoke a license or otherwise take disciplinary action against a person
9 who holds a license, upon the ground that the applicant or the licensee has been
10 convicted of a crime substantially related to the qualifications, functions, and duties
11 of the licensee in question, the record of conviction of the crime shall be conclusive
12 evidence of the fact that the conviction occurred, but only of that fact, and the board
13 may inquire into the circumstances surrounding the commission of the crime in
14 order to fix the degree of discipline or to determine if the conviction is substantially
15 related to the qualifications, functions, and duties of the licensee in question.

16 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
17 'registration.'

18 10. Section 2761 of the Code states:

19 The board may take disciplinary action against a certified or licensed nurse
20 or deny an application for a certificate or license for any of the following:

21 (a) Unprofessional conduct, which includes, but is not limited to, the
22 following:

23 ...

24 (f) Conviction of a felony or of any offense substantially related to the
25 qualifications, functions, and duties of a registered nurse, in which event the record
26 of the conviction shall be conclusive evidence thereof.

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28 11. Section 2762 of the Code states:

 In addition to other acts constituting unprofessional conduct within the
 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
 person licensed under this chapter to do any of the following:

 (b) Use any controlled substance as defined in Division 10 (commencing with
 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
 device as defined in Section 4022, or alcoholic beverages, to an extent or in a
 manner dangerous or injurious to himself or herself, any other person, or the public
 or to the extent that such use impairs his or her ability to conduct with safety to the
 public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section, in
5 which event the record of the conviction is conclusive evidence thereof.

6 REGULATORY PROVISIONS

7 12. California Code of Regulations, title 16, section 1444, states:

8 A conviction or act shall be considered to be substantially related to the
9 qualifications, functions or duties of a registered nurse if to a substantial degree it
10 evidences the present or potential unfitness of a registered nurse to practice in a
11 manner consistent with the public health, safety, or welfare. Such convictions or
12 acts shall include but not be limited to the following:

13 (a) Assaultive or abusive conduct including, but not limited to, those
14 violations listed in subdivision (d) of Penal Code Section 11160.

15 (b) Failure to comply with any mandatory reporting requirements.

16 (c) Theft, dishonesty, fraud, or deceit.

17 (d) Any conviction or act subject to an order of registration pursuant to
18 Section 290 of the Penal Code.

19 13. California Code of Regulations, title 16, section 1445(b), states:

20 When considering the suspension or revocation of a license on the grounds
21 that a registered nurse has been convicted of a crime, the board, in evaluating the
22 rehabilitation of such person and his/her eligibility for a license will consider the
23 following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or offense(s).

27 (4) Whether the licensee has complied with any terms of parole, probation,
28 restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

29 COST RECOVERY

30 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
31 administrative law judge to direct a licensee found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(August 4, 2011 Criminal Conviction for Alcohol-Related Reckless Driving**
3 **on May 7, 2011)**

4 15. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) of
5 the Code in that Respondent was convicted of a crime substantially related to the qualifications,
6 functions, and duties of a registered nurse. The circumstances are as follows:

7 a. On or about August 4, 2011, in a criminal proceeding entitled *People of the State of*
8 *California v. John Patrick Valarik*, in the San Diego County Superior Court, Central Division, in
9 Case No. M131829, Respondent was convicted on his guilty plea of violating Vehicle Code
10 section 23103(a) per Vehicle Code section 23103.5 (alcohol-related reckless driving), a lesser
11 included offense of section 23152(b) (driving with a blood alcohol content of 0.08% or more), a
12 misdemeanor. As a result of a plea agreement, counts for violating Vehicle Code sections
13 23152(a) (DUI), 23152(b) (driving with blood alcohol content of 0.08% or more), and 12500(a)
14 (unlicensed driver), misdemeanors, were dismissed.

15 b. As a result of the above conviction, the Court placed Respondent on three (3) years
16 summary probation and ordered that Respondent violate no laws, pay various fines and fees, and
17 enroll in and complete a 3-month First Offender Program and a MADD Victim Impact Panel.

18 c. The circumstances that led to Respondent's conviction are that on May 7, 2011, at
19 approximately 3:40 a.m., California Highway Patrol Officers, while on routine patrol, observed
20 Respondent's vehicle traveling on I-5 in San Diego, south of Old Town Avenue in the #2 lane
21 swerving back and forth. Officers initiated a traffic enforcement stop and Respondent complied
22 by yielding to the right and exiting the freeway at Old Town Avenue. When officers made
23 contact with the driver (Respondent), officers observed that he had red, watery eyes and was
24 lethargic. Officers smelled the odor of an alcoholic beverage emitting from within the vehicle.
25 Respondent produced a Pennsylvania driver's license. Officers asked Respondent how much
26 alcohol he had consumed, and Respondent told officers that he had consumed three drinks.
27 Officers directed Respondent to exit his vehicle and walk to the right front side of the patrol
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1 vehicle. Officers instructed Respondent to perform a series of field sobriety tests, which he
2 failed. Respondent was placed under arrest for driving under the influence of alcohol and was
3 transported to the San Diego County Jail where officers administered a breath test, which resulted
4 in a reading of 0.14% BAC. A second breath sample resulted in a reading of 0.13% BAC.
5 Respondent was booked at the San Diego County Jail.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Use of Alcohol in a Manner Dangerous**
8 **or Injurious to Self or Others)**

9 16. Respondent is subject to disciplinary action for unprofessional conduct under Code
10 section 2762, subdivision (b), in that on May 7, 2011, he used alcohol to an extent or in a manner
11 that was dangerous to himself and the public when he drove a motor vehicle with a significantly
12 high BAC, as set forth in paragraph 15, above, which is incorporated here by reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Conviction of an Alcohol-Related Crime)**

15 17. Respondent is subject to disciplinary action for unprofessional conduct under Code
16 section 2762, subdivision (c), in that he was convicted of a criminal offense involving the
17 consumption of alcohol, as set forth in paragraph 15, above, which is incorporated here by
18 reference.

19 **DISCIPLINARY CONSIDERATIONS**

20 18. To determine the degree of discipline, if any, to be imposed on Respondent for the
21 violations alleged above, pursuant to California Code of Regulations, title 16, section 1445,
22 Complainant alleges:

23 a. In a pre-licensure letter to the Board dated July 12, 2010, Respondent disclosed the
24 following Pennsylvania convictions:

25 (1) On or about September 18, 1994, Respondent was arrested in Brackenridge,
26 Pennsylvania, for DUI, which resulted in a motor vehicle accident. Respondent was convicted on
27 his plea of guilty and sentenced to two days in the county jail and was ordered to pay various
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1 fines and fees, enroll in and complete an alcohol highway safety class, attend six (6) mandatory
2 AA meetings, and Respondent's driving privilege was suspended for one year.

3 (2) On or about May 19, 1996, Respondent was arrested in East Deer Township,
4 Pennsylvania, for public drunkenness. Respondent was convicted on his plea of guilty and the
5 Court ordered him to pay a fine and issue a formal apology to the Court.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 783815 issued to John
10 Patrick Valarik;

11 2. Ordering John Patrick Valarik to pay the Board of Registered Nursing the reasonable
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
13 Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: August 24, 2012

Louise R. Bailey
16 LOUISE R. BAILEY, M.ED., RN
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

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